

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN**

---

**UNITED STATES OF AMERICA,**

**v.**

**Case No. 06-C-1186  
(03-CR-259)**

**GARY R. GEORGE,**

**Movant.**

---

**DECISION AND ORDER**

---

Gary George pled guilty to a conspiracy to defraud the United States, in violation of 18 U.S.C. § 371. This Court sentenced George to 48 months' imprisonment. On November 15, 2006, George filed a motion to vacate, set aside or correct his sentence, pursuant to 28 U.S.C. § 2255.

In his § 2255 motion, George raises six grounds for relief. First, he alleges that his conviction was a violation of the grand jury clause of the Fifth Amendment. Second, he claims that his sentence contravened the holding of *United States v. Booker*, 543 U.S. 220 (2004), and thus violated the Sixth Amendment. Third, he alleges that his appellate counsel was constitutionally defective. Fourth, he argues that his conviction should be vacated because he was innocent. Fifth, George claims that the decision to prosecute him was a

product of unconstitutional discrimination on the basis of his race. And finally, he claims that the U.S. Attorney breached the plea agreement by accusing George of additional criminal activity in a separate, related case that damaged George's reputation.

After conducting its initial review, the Court finds that Grounds One, Two, Three, Five and Six all raise, at least on their face, colorable claims for relief. Ground Four, though, will be dismissed.

George claims in Ground Four that he was innocent of the crime described in Count One of the Superseding Indictment. Yet, George pled guilty to Count One. That is, he admitted that he conspired with Mark Sostarich and others "to commit offenses involving federal program funds." (Superseding Indictment ¶ 1.) Now, in his § 2255 motion, he wants to argue that the money provided to Sostarich was entirely for bona fide fees, and that he is in fact not guilty of the crime to which he pled guilty.

George's claim is not a cognizable ground for relief in a § 2255 motion because it does not allege a violation of the Constitution or of any federal law. *See* 28 U.S.C. § 2255; *Ruth v. United States*, 266 F.3d 658, 660 (7th Cir. 2001). Accordingly, the Court will dismiss Ground Four of George's § 2255 motion.

The government shall file an answer, motion, or other response no later than January 13, 2007.

**NOW, THEREFORE, BASED ON THE FOREGOING, IT IS HEREBY  
ORDERED THAT:**

Ground Four of George's § 2255 Motion is **DISMISSED**. The government shall file an answer, motion, or other response no later than **January 13, 2007**.

Dated at Milwaukee, Wisconsin this 28th day of November, 2006.

**BY THE COURT**

s/ Rudolph T. Randa

**Hon. Rudolph T. Randa**  
**Chief Judge**